

1 THE COURT: Good afternoon, please be seated.

2 COURTROOM DEPUTY: Number 88 through 93 on the
3 calendar, all matters regarding Liberty Towers Realty LLC and
4 Liberty Towers Realty I, LLC.

5 MR. CARLEBACH: Good afternoon, Your Honor, David
6 Carlebach representing the debtors, Liberty Towers Realty, LLC
7 and Liberty Towers Realty I, LLC.

8 MR. HEALEY: Good afternoon, Your Honor, Michael
9 Healey with Farrell Fritz, PC counsel for the lender W. F.
10 Liberty.

11 THE COURT: Thank you.

12 MS. MARTIN: Mary Lou Martin representing United
13 States Trustee.

14 THE COURT: Thank you.

15 MR. FRIEDMAN: Greg Friedman from Kriss & Feuerstein
16 on behalf of Richmond Liberty LLC.

17 THE COURT: All right, thank you. All right, we have
18 a number of matters on the calendar today beginning, as always,
19 with the 11 -- in Chapter 11 with our adjourned status
20 conferences. And just to summarize what's coming, the Motion
21 to Reconsider for Liberty Towers Realty, LLC and similarly
22 status on Motion to Reconsider in Liberty Towers Realty I, LLC.

23 In addition the motion that was filed on Friday
24 evening has been added to the calendar, the motion seeking
25 certain expedited relief.

1 Mr. Carlebach, let's hear from you. Let's start with
2 status.

3 MR. CARLEBACH: With respect to status, the debtors
4 are current on their monthly operating reports. They may owe a
5 few dollars in Trustee fees. I know my office was
6 communicating with the debtors as late as today to try to get
7 those things paid, but we may owe a few dollars. The Office of
8 the United States Trustee may have a better idea about that.

9 THE COURT: How are we doing on operating reports?

10 MR. CARLEBACH: We are up to date on operating
11 reports.

12 THE COURT: And on the UST fees are they current?

13 MS. MARTIN: Your Honor, Liberty Towers Realty owes
14 \$325; Liberty Towers Realty I owes -- Liberty Towers I, I'm
15 sorry -- owes \$976.

16 THE COURT: Okay. It'd be nice to get those sums
17 paid. I know we've conferenced on them from time-to-time.

18 MR. CARLEBACH: It's just, you know, there's
19 unfortunately sometimes the smaller items get lost in the
20 shuffle and I try to impress upon the debtors that, you know,
21 the devil is in the details and that these things need to get
22 done. And they inevitably get done, but they will -- if the
23 court wants to set a date for that, we can --

24 THE COURT: Let's do that. And then I see we also
25 issued a direction to re-file a document in the -- I'll call

1 it -- in the first case, Liberty Towers Realty because there
2 was some information individual person --

3 MR. CARLEBACH: Yes there was some -- there was a
4 redaction issue. I believe my office, you know, --

5 THE COURT: It's with respect to Document Number 55.
6 Can we just check and see if that has been taken care of? This
7 is really something we do to protect the parties if we see
8 something that should be omitted from a filing. We can
9 temporarily -- but not permanently -- restrict access to a
10 document and we do that, of course, to protect that
11 confidential information, so, whatever it may be.

12 COURTROOM DEPUTY: Number 57, I think would be --

13 THE COURT: Fifty-five and -- it's -- oh, so 57
14 addresses the problem; is that right?

15 COURTROOM DEPUTY: Yeah I'm just going through the
16 computer.

17 THE COURT: We'll check to be sure. If not, we'll
18 let you know before --

19 MR. CARLEBACH: I know I wasn't -- I was speaking to
20 my office about taking care of it. I'm not sure if it was
21 actually done. But we were on top of that issue.

22 I mean, that's really -- in terms of status, that's
23 really what's going on. There was -- the court also had --
24 there was also discussion in the context of the lift stay,
25 there was a discussion about the real estate taxes and --

1 THE COURT: And I meant to ask, thank you.

2 MR. CARLEBACH: No, I actually -- I have a check. I
3 forgot to bring it with me -- I annexed it to my papers. But
4 there is -- we do have a check ready for -- you know, we ask
5 the mortgagee for a calculation of how much had been paid by
6 his client and, you know, in our estimation it was -- we're
7 talking about post-petition taxes -- it was something in the
8 \$85,000 range and we do have a check to pay that.

9 The DIP account has been funded by the debtor to pay
10 those.

11 THE COURT: To permit the payment of that?

12 MR. CARLEBACH: Exactly and the check has been
13 written out and like I said I just -- I neglected to bring it
14 with me today, but I can retrieve it, so to speak, you know,
15 and, you know, represent that we will make that payment.

16 And again as I put in my papers the only reason --
17 you know, I had directed the debtor to pay that immediately.
18 The debtor had been in conversations with the secured
19 creditor's principal about a resolution to this whole dispute,
20 so to speak. And the taxes were also part of that discussion.

21 And it was only in the last few days that it appeared
22 that the discussions had faltered that I directed the debtor
23 that it needs to write that check immediately.

24 And it was -- it is -- and again I never -- just to
25 be clear -- I never directed the debtor not to comply with the

1 court's directive. But the debtor on it's own felt that since
2 it was going to resolve it, but in any event, the check is
3 available and I was prepared to hand it to the secured creditor
4 today but I, like I said I was --

5 THE COURT: And just to step back, the approach being
6 to reimburse the expense already incurred to keep the taxes
7 current.

8 MR. CARLEBACH: Correct.

9 THE COURT: Okay.

10 MR. CARLEBACH: There may be a new July bill that has
11 come due, which we would be responsible for. This was --

12 THE COURT: Okay.

13 MR. CARLEBACH: -- you know, what had been paid
14 already from January through July. I mean it's like a -- they
15 come due either quarterly or bi-annually. And, you know, so we
16 are prepared to bring that current. And again, that's a very
17 serious dollar. It's close to \$85,000. And, you know, --

18 THE COURT: All the more reason to pay it.

19 MR. CARLEBACH: Which we will pay.

20 THE COURT: This is a serious expense that has been
21 incurred and not paid in the post-petition period, not paid by
22 the debtor. So that's a concern however the case goes.

23 All right and I take it that it's the debtor's --
24 well staying with status, Ms. Martin?

25 MS. MARTIN: Your Honor, I have nothing else to add

1 in the court's status.

2 THE COURT: From a secured creditor's perspective?

3 MR. HEALEY: A couple observations, Your Honor.

4 First of all it's unclear to the lender where the source of
5 these funds originates.

6 THE COURT: The \$85,000?

7 MR. HEALEY: Correct. They're -- these properties
8 that the debtors own are not improved. They do not, there's
9 any income. So the question is where is this money coming
10 from.

11 THE COURT: From a Chapter 11 standpoint that's a
12 good question to ask. Is this a borrowing by the debtor? Is
13 it a capital contribution.

14 MR. CARLEBACH: Your Honor, we could -- it's a
15 capital contribution. This is not a -- we did not apply for a
16 borrowing order and the debtor -- in the same way -- you know,
17 the secured creditor counselor is correct. The debtor does not
18 earn income and like U.S. Trustee fees and insurance -- all
19 those expenses are being borne by the debtor's principal as a
20 capital contribution, you know, without any -- we have not
21 sought a borrowing order --

22 THE COURT: Without any expectation of repayment?

23 MR. CARLEBACH: Exactly. So it's -- you know, we
24 haven't sought relief under 364 and, you know, it's just --

25 Your Honor, I mean that's just part of the, you know, part of

1 the being -- the price of being a Chapter 11 is making sure
2 that admins are paid, you know, whatever it is. And the debtor
3 is committed to doing that.

4 THE COURT: Okay.

5 MR. HEALEY: Also, Your Honor, I noticed on the copy
6 of the check --

7 THE COURT: But -- I'm so sorry -- but just to be
8 clear the source of the funds is the debtor's principal
9 personal funds?

10 MR. CARLEBACH: Correct.

11 MR. HEALEY: Which principal is that?

12 THE COURT: Would that be -- well could you identify
13 the individual?

14 MR. CARLEBACH: Toby Luria is the debtor.

15 THE COURT: All right, Mr. Luria. And Mr. Luria is
16 here today in court?

17 MR. CARLEBACH: That's -- no Ms. Luria is not here
18 today in court.

19 THE COURT: I'm sorry.

20 MR. CARLEBACH: And the gentleman to my right, his
21 name is Larry Deluca (phonetic) -- Lorenzo Deluca -- who is
22 the -- he is the purchaser under the respect --

23 THE COURT: Of course and I think you've been here
24 before. All right. Thank you for coming in.

25 MR. HEALEY: Another observation about the check that

1 was annexed to the debtor's most recent motion. The check is
2 drawn on the DIP account of one of the debtors. And it's
3 unclear whether the -- whether the amount of taxes being
4 tendered or intended to be tendered it represents taxes for
5 that one debtor or for both debtors.

6 If it's intended to be payment of taxes or
7 reimbursement of taxes for both debtors, there should be
8 separate checks. One from each of the debtors.

9 THE COURT: There are two DIP accounts are there not?

10 MR. CARLEBACH: There are.

11 THE COURT: Both at Capital One Bank?

12 MR. CARLEBACH: Yes.

13 THE COURT: Okay, so is the check -- you have one
14 check for each property.

15 MR. CARLEBACH: Secured creditors counsel is probably
16 correct and one of the difficulties in this, we're dealing with
17 a real slew of parcels of land. And when I asked secured
18 creditor for, you know, evidence of what's been paid, we got
19 about 10 to 15 checks.

20 THE COURT: My question was actually is it one check
21 or two checks?

22 MR. CARLEBACH: It's one check.

23 THE COURT: One check and does it address -- or is it
24 intended to reimburse expenses incurred for real estate taxes
25 for each of the two entities, the two debtors?

1 MR. CARLEBACH: Correct.

2 THE COURT: Do you think it would be -- I'm going to
3 suggest that it may well be better to have a separate check
4 from each respective DIP account with the monies flowing into
5 the account and then out of the account as capital
6 contributions for each of the separate entities. Otherwise it
7 seems to me you've got a -- at least as a technical matter --
8 you've set up an inter-debtor transaction where the principal
9 funds -- one entity which then funds obligation of another
10 entity.

11 MR. CARLEBACH: Point is very well taken, Your Honor.
12 And --

13 THE COURT: It may be a question of two deposit slips
14 and two checks rather than one deposit slip and one check.
15 You'll save yourself a lot of trouble down the road, I think to
16 do it that way.

17 MR. CARLEBACH: As long as we can -- it just
18 necessitates a breakdown of what's owed for what -- for one --

19 THE COURT: Yes.

20 MR. CARLEBACH: -- and one for the other debtor.

21 THE COURT: I agree. But I think the debtor entities
22 need to know what taxes they are responsible for.

23 MR. CARLEBACH: We can -- we can do that.

24 THE COURT: Is there ambiguity at the moment as to
25 what taxes are owed, for example, by Liberty Towers Realty as

1 opposed to Liberty Towers Realty I?

2 MR. CARLEBACH: There is not real ambiguity because
3 at the end of the day, you can always go on to the New York
4 City Department of Finances website and ascertain exactly
5 what's owed for what.

6 THE COURT: How many lots? If you think in terms of
7 borough, block and lot. How many lots are involved here --

8 MR. CARLEBACH: A lot.

9 THE COURT: -- more or less. Actually I'll say
10 preciously. I take it more than two.

11 MR. CARLEBACH: Yes, yes. It's eight and five is the
12 breakdown.

13 THE COURT: Eight and five. I miss heard you to say
14 85 for a moment. The good news is we have a lot of real
15 property. The bad news is we have a lot of attention to
16 detail.

17 So I think it's important to sort that out and
18 deliver those checks by -- when do you think is a reasonable
19 time frame? A week? A lot of time to sort those out.

20 MR. CARLEBACH: Yes, we'll get that done within a
21 week, Your Honor.

22 THE COURT: But I want to make it practical. Does
23 that work? And those are bank checks?

24 MR. CARLEBACH: Well they're DIP checks in the first
25 instance.

1 THE COURT: Certified checks?

2 MR. CARLEBACH: We can certify them if that's how the
3 court directs.

4 THE COURT: Does it make sense? I think it make
5 sense.

6 MR. CARLEBACH: Yes, Your Honor.

7 THE COURT: Are there any properties that are owned
8 by both entities?

9 MR. CARLEBACH: Not that I'm aware of.

10 THE COURT: Okay. So far as you know there's five in
11 one and eight in the other and they are separate? Okay, that's
12 good.

13 All right, what's next?

14 MR. HEALEY: One other observation if I may, Your
15 Honor. Mr. Carlebach made references to negotiations -- or
16 recent negotiations between the parties. I spoke to my
17 clients, both principal and my client, just before leaving for
18 court this afternoon, and they both confirmed that there had
19 been no on-going discussions whatsoever.

20 THE COURT: Even communication?

21 MR. HEALEY: There have been no discussion -- whether
22 Mr. Puritz (phonetic) on behalf of the debtor reached out to my
23 clients, maybe a question for the fact my clients have not
24 responded to any overture. My clients are insisting on
25 enforcing their rights under the lift stay order.

1 MR. CARLEBACH: It sounds almost like a broken record
2 because this conversation -- we've had this. Whether they
3 have. I've been in daily communication with Mr. Puritz who's
4 been negotiating on behalf of the debtor. He's had extensive
5 communications with Mr. Konig.

6 There are two principals of the debtor. There's a
7 father and a son. And I've had this conversation with Mr.
8 Healey that there has been some times different communications
9 coming out from, you know, and I'm prepared to put in sworn
10 affidavits in that regard --

11 THE COURT: It doesn't address a disputed issue
12 before the fact -- before the court. There's no need to put in
13 testimony as to whether the parties are trying to resolve
14 matters consensually. I encourage the parties to try to
15 resolve matters consensually in this and nearly every other
16 case.

17 I do often see situations where what one party calls,
18 you know, productive discussions another party sees very
19 differently. The presence or absence of communication is
20 usually an objective fact and whether that's happening or not,
21 it seems to me since the outset that the path of all concerned
22 with respect to these properties has been a path directed
23 toward a sale.

24 And in view of that often it can be productive to
25 talk to each other and see what the best, most efficient, most

1 affective way to sell the property is. I assume your point is,
2 you know, the first, second and third priorities are to get
3 paid and to get paid promptly. And whoever is the buyer in the
4 transaction, at least the funds that cause you to be paid may
5 well not matter much to the secured creditors, so.

6 But I'm not telling you anything you don't already
7 know as good and experienced counsel practicing in this area.
8 So on consent the debtor will reimburse secured creditor for
9 post-petition real estate taxes paid by DIP certified check by
10 July 20th, 2015. That'll be so ordered.

11 All right. Is there anything else with respect to
12 status that requires the courts attention that would be helpful
13 for the court to know? No response.

14 All right. What has happened since our last status
15 conference? I know the lift stay order has been out there for
16 sometime now. What if any -- what's happened from the secured
17 creditors?

18 MR. HEALEY: We have scheduled a foreclosure sale to
19 occur for both properties on July 16th.

20 THE COURT: July 16th. Okay, that is to say
21 Thursday. All right. I think that brings us then to the
22 motion to reconsider in the Realty and Realty I case.

23 Mr. Carlebach, it's your motion. Unless there's
24 anything else to address I think it's appropriate for me to
25 hear from you.

1 MR. CARLEBACH: Thank you, Your Honor. And just to
2 be clear, the emergency motion to reimpose the stay is
3 really -- it's really an extension of the reconsideration
4 motion. It's just that I know that Your Honor does not like to
5 act without an application before the court seeking that
6 specific relief.

7 And the, you know, this court could in theory take
8 the reconsideration motion under advisement. And even it were
9 inclined to grant the relief we ask for, but not necessarily
10 rule until after the foreclosure sale went forward so I wanted
11 to just impress upon the court that we do have this foreclosure
12 sale scheduled for a few days from today and that unless the
13 court grants us some kind of temporary injunctive relief today
14 basically the reconsideration motion will become moot.

15 THE COURT: I can decide -- I worked hard to be in a
16 good position to hear your argument. Take a break if I need
17 you to reflect, but I tried really hard to rule on it today.
18 It's our second hearing. It was calendared for June 9th
19 originally, was it not? Unlike the other motion which was made
20 on Friday night, this one the parties have had a chance to
21 address; court's had a chance to consider. I think we did have
22 a prior conference on this motion.

23 MR. CARLEBACH: We did on June 9th. We did.

24 THE COURT: So there's no reason not to proceed
25 today.

1 MR. CARLEBACH: Okay, --

2 THE COURT: I look forward to hearing the argument.

3 MR. CARLEBACH: -- and that's fine. I took -- again
4 I took the liberty of making -- aware that the court is already
5 familiar with the issues are basically before the court
6 already.

7 THE COURT: When it's a reconsideration motion, it's
8 necessarily the case that the case is familiar with the issues.
9 The court has ruled. The court is being asked to reconsider
10 its own decision, so please proceed.

11 MR. CARLEBACH: So essentially what we have argued is
12 that there was a new development which at the time that the
13 lift stay motion was pending the debtor was unaware of -- which
14 was basically that a third party, Richmond Liberty, who is
15 represented by counsel here today, had filed a lis pendens
16 against the debtors property during the pendency of the
17 bankruptcy case.

18 And Richmond Liberty is, as Your Honor, is not a
19 party in this case in the first instance. We have sued them in
20 our adversary proceeding, but before that they were not a
21 party. Their only relationship to the case is apparently
22 they entered into a pre-petition contract with the secured
23 creditor, W.F. Liberty, which basically was, you know, I guess
24 the most favorable way to couch it would be a best efforts
25 contract that if and when W.F. Liberty got the property at a

1 foreclosure sale -- because it was entered into before the
2 bankruptcy was filed -- it would then sell it to Richmond
3 Liberty for a price of 8,750,000. That was -- that's sort of
4 where that number comes from.

5 And what then happened was we filed the bankruptcy
6 case, which stayed the foreclosure and sort of stymied Richmond
7 Liberty's efforts to get the property through their contract.
8 So they went ahead and sued W.F. Liberty in State court
9 essentially arguing that what was going on in the Bankruptcy
10 court was a violation of their state law contract.

11 In fact, they make mention of a status conference
12 that we had in this court where it was actually an adjournment
13 of the original lift stay motion in February where the debtor
14 was discussing a deal that it would have with W.F. Liberty and
15 basically what they said was any discussion of a deal with the
16 debtor is a violation of our pre-petition contract to, you
17 know, get us the property.

18 And, you know, one of our arguments is that, you
19 know, --

20 THE COURT: Does the contract contain a no-shop
21 provision? How would it be a violation of a contract to talk
22 to someone in a courthouse about a possible resolution to a
23 dispute?

24 MR. CARLEBACH: Well, I'm in accord, Your Honor. We
25 believe that the -- we believe that the action was frivolous

1 and was meant to intimidate W.F. Liberty into not doing a deal
2 with the debtor. And then what they went ahead to really drive
3 the point home, they went ahead and filed the lis pendens
4 against the debtor.

5 Even though they had no connection with the debtor
6 they had a state court dispute, if you can call it that, with
7 W.F. Liberty about property that W.F. Liberty didn't own --

8 THE COURT: The state law with respect to a lis
9 pendens is pretty clear isn't it when you're entitled to --

10 MR. CARLEBACH: It is. And in fact --

11 THE COURT: It simply puts the world on notice of a
12 case and case is separately a matter of public record.

13 MR. CARLEBACH: It's only when you have a dispute
14 over property that's owned by one of the parties. You can't
15 put a lis pendens on the property of a third party. The debtor
16 was not a party to this dispute.

17 THE COURT: So what is -- for the sake of a clear
18 record, there's a standard on a motion to reconsider and of
19 course it has to go beyond we disagreed with the result at the
20 time and we still disagree. They're very particular standards
21 and there should be because if motions to reconsider are too
22 freely granted then the finality of orders will be put at risk
23 and particularly in the bankruptcy context where we move
24 forward in a case -- especially in a Chapter 11 -- on the basis
25 of a series of orders entered -- often sometimes contested,

1 often consensual.

2 I think it would be helpful to focus on the motion
3 you've made, the relief you seek, the standard and how you meet
4 the standard. Because that's what I need to do in order to
5 decide your motion.

6 MR. CARLEBACH: The standard is that the moving party
7 has to show that there are new facts which were not in its
8 possession at the time that it made the motion or the court
9 made the ruling that have come to light which would be
10 grounds -- which if the court and the parties had been aware of
11 that fact, they would not have entered the order.

12 THE COURT: Right.

13 MR. CARLEBACH: The lis pendens filed, which the
14 debtor was not aware of, was firstly, Your Honor correctly
15 points out as a matter of state of law, illegal. It was an
16 illegal --

17 THE COURT: That is not what I said, to be clear.

18 MR. CARLEBACH: No, I understand. I'm just
19 extrapolating --

20 THE COURT: Please don't say it's what I said,
21 Mr. Carlebach.

22 MR. CARLEBACH: No, what I'm trying to say is at Your
23 Honor's point that state law governs when you can file a lis
24 pendens. And I didn't make this point in my papers, but it
25 happens to be that it's what's called a slander on title. If

1 you file a lis pendens inappropriately in a completely state
2 law venue against a property which is not part of your lawsuit,
3 that in itself is actionable.

4 But in this case where you have a bankruptcy stay for
5 people who are bankruptcy counsel, who regularly appear before
6 this court, are very well aware of what an automatic stay is,
7 to go ahead and file a lis pendens against the debtor's
8 property to create a clear advantage for their client in their
9 negotiations over that property is clearly a fact which would
10 change this court's view of how it would have decided the lift
11 stay motion. And --

12 THE COURT: Because?

13 MR. CARLEBACH: Because if the court had been aware
14 that there was a third party who was interfering -- let me just
15 back up for one second.

16 The issue as the court may recall was the debtor was
17 trying to come up with a contract of sale and had the debtor
18 been able to come up with a contract of sale, it would have
19 been able to conclude a deal with the mortgagee. And that's
20 what --

21 THE COURT: You mean, within the 45 day period? My
22 recollection of the record is that the debtor consented to the
23 entry of the order granting relief from the automatic stay
24 understanding that the debtor would have 45 days to work toward
25 obtaining a contract of sale on the property. An order was to

1 be settled on 45 days notice.

2 So it was not so much what led up to the entry of the
3 order, but the framework within which the order was entered
4 that the debtor would have 45 days within which to sell the
5 property; isn't that right?

6 I mean, maybe my notes are wrong and my recollection
7 is wrong, but -- and that it was entered on consent and that at
8 the time it was entered, I believe you may have acknowledged in
9 open court both that there was no equity and that you would be
10 unable to confirm a plan -- if I recall being -- struck by the
11 productive nature of the hearing that we were able to identify
12 and address the issues in a fairly straight forward way.

13 That the debtor would not be able to confirm without
14 consent and so stay relief was appropriate and 45 days to sell
15 also made sense and I take your argument to be now that because
16 the debtor was unsuccessful in selling the property in those 45
17 days you have to look at what happened in that period and see
18 if there's a reason to revisit the framework the court put in
19 place? Is that in effect the argument?

20 MR. CARLEBACH: It'd have to go -- the hearing before
21 the one -- I believe that the March 6th was the point where the
22 debtor acknowledged to the court that it couldn't get. But
23 there was a hearing before then in February -- I believe it
24 might have been February -- I'm not 100 percent sure when it
25 was. It was in February was the initial hearing.

1 At that hearing the secured creditor acknowledged on
2 the record that there were discussions that were ongoing
3 between the debtor and the secured creditor. And the framework
4 of those discussions was that the debtor's ability to get a
5 contract of sale.

6 And as long as the debtor got a contract of sale
7 which was equal to the amount of the other contract that had
8 been entered into pre-petition between the secured creditor and
9 Richmond Liberty that the secured creditor would be happy to
10 sell the property to the debtors prospective proponent of
11 sale -- prospective purchaser.

12 And the point was that at the time there was -- what
13 really happened was that Richmond Liberty's contract with the
14 secured creditor had a termination -- had a sunset clause of
15 November of 2014.

16 By engaging in all this activity they forced Richmond
17 Liberty to extend that sunset clause. The point is by acting
18 illegally they prescribed the debtor's ability to negotiate
19 with it's secured creditor. The debtor was involved in
20 negotiations -- acknowledged on the record in February. And
21 then got for some reason we couldn't sign a contract, we came
22 back in March. We had to acknowledge we couldn't sign a
23 contract.

24 And that's when we said to the court we'd like some
25 more time and the court agreed to put out the entry of the

1 order.

2 But the point was the reason why we couldn't get a
3 contract was because there was a third party, with the
4 knowledge of the secured creditor, that was filing illegal
5 encumbrances on our property. And we couldn't resolve our
6 obligation with the secured creditor -- which it clearly
7 acknowledged it would have but for their illegal conduct.

8 Had they not filed a lis pendens against our
9 property, we would have cut a deal, we would have had a
10 contract and we would have cut a deal with our secured
11 creditor.

12 THE COURT: Just as a -- just as a question, is there
13 any evidence before the court of that lis pendens other than
14 your argument?

15 MR. CARLEBACH: Well I don't know if I acknowledged
16 it. It's not in dispute, Your Honor, that they filed it. I
17 mean, I don't know if I appended it to my papers. It may be
18 appended to the adversary proceeding.

19 THE COURT: You said you might, but you didn't. It
20 may be that there's a reference to it, but it's not -- I don't
21 believe it's before the court. It may well be undisputed.

22 Mr. Carlebach, I guess I'm really struggling with how
23 those circumstances -- I'll take them at face value and assume
24 they're true. You've suggested even perhaps there was some
25 intent to do harm associated with this.

1 I don't know. I'd like to understand better why that
2 goes to the decision -- why that is new evidence -- having in
3 mind the Second Circuit Standard -- with respect to the lift
4 stay or relief that was granted on consent why some how that is
5 grounds to reconsider and reach a different conclusion.

6 Maybe it's torts' interference with contract claim;
7 maybe it's something else. I understand the sale is coming up
8 soon, but I don't yet see how these facts and circumstances
9 undermine the basis for the court's entry of an order granting
10 a relief from the automatic stay.

11 I'll say again on consent because there's no equity
12 and no ability to confirm a plan. I don't know that either of
13 those facts has changed. Those were independently basis for
14 relief from the automatic stay.

15 MR. CARLEBACH: Again, Your Honor, --

16 THE COURT: Have either of those things changed?

17 MR. CARLEBACH: They have not, Your Honor.

18 THE COURT: Okay, so if I reconsider I would be
19 constrained to reach the same conclusion today, would I not?

20 MR. CARLEBACH: Well in essence what you're saying
21 Judge, the point is sometimes the court has to look behind
22 exactly --

23 THE COURT: Stay with my question for a moment and
24 then you can continue. But my question was I would -- are not
25 the same grounds present today, would not the same result be

1 required today.

2 MR. CARLEBACH: If you view that -- if you view this
3 case in a complete vacuum and just --

4 THE COURT: If I view 362(b) --

5 MR. CARLEBACH: If I look at it in a complete vacuum
6 of the circumstances of this case, the answer is yes. It's the
7 same. But I don't think that the court can look at this case
8 in a complete vacuum. There was negotiations going on with the
9 secured creditor. They were acknowledged on the record. We
10 were trying to get a contract of sale.

11 If you look at the adversary proceedings that we
12 filed, there clearly were extenuating circumstances going on
13 here. You have a third party filing illegal encumbrances
14 against the debtor to try to get an advantage in a negotiation.
15 I mean all of that is a direct violation and contravention of
16 everything the Bankruptcy Code stands for.

17 The Bankruptcy Court has a manifest interest in
18 letting a debtor negotiate with its creditors. When some third
19 party comes in and violates the code to get an advantage, I
20 believe that this court has to step back and say one second.
21 I'm not going to give you relief for acting illegally.

22 I'm not going to let -- because the bottom line is
23 that they will benefit. They will get to take our property
24 away from us because they will benefit by their illegal
25 conduct.

1 And I think that this court -- again, we're asking
2 for a stay. A stay doesn't prejudice anybody's rights in the
3 long term. It just says --

4 THE COURT: You need a motion to reconsider. That's
5 the motion you're arguing, --

6 MR. CARLEBACH: I understand.

7 THE COURT: -- not the -- we're not arguing the
8 motion you filed Friday night right now.

9 MR. CARLEBACH: My motion to reconsider is basically
10 that but for the illegal conduct of a third party, this court
11 would never have granted relief from the stay. Had this court
12 been aware at the time that we were telling the court we're out
13 trying to get a purchaser for this contract -- had this court
14 been aware that there was a third party that illegally filed
15 the lis pendens that completely hampered and prevented the
16 debtor from negotiating with its creditors from getting a
17 contract of sale, this court would have said just a minute. We
18 have to allow the debtor the ability -- we have to first clear
19 up the illegal encumbrance before I can grant anybody relief in
20 this case.

21 THE COURT: But don't you think the law provides
22 different remedies for interference with perspective economic
23 relations including, for example, the New York State cause of
24 action of interference with perspective economic relations?

25 I'm still -- I'm trying as hard as I can to view this

1 as comprehensively as possible, but in light of the motion to
2 reconsider the grant of relief from the automatic stay as
3 opposed to a broad equitable jurisdiction to prevent
4 inequitable conduct in commercial relations.

5 MR. CARLEBACH: Again, you know, in this case, we
6 have represented to the court and it's in the court's record,
7 that there were negotiations ongoing between the debtor and the
8 secured creditor about a contract of sale.

9 We've put in the court's record the pre-petition
10 contract that was done between a third party and the secured
11 creditor. So there's clearly -- there's clearly a basis for
12 the debtors representation that the secured creditor was
13 looking for a certain amount of money based on the contract
14 that they had already signed with the third party and it makes
15 complete sense that they would say to the debtor that listen we
16 have a contract with those guys, cut if you can come up with
17 similar money, we'll do business with you.

18 That's what the discussion was; that's what we
19 represented to the court and that's what was acknowledged by
20 the secured creditor on the record in February. Not on the
21 March 6th date --

22 MR. HEALEY: Your Honor, I have to object, this is
23 repeat. He's made this representation that it never happened
24 in February. Never acknowledged that we were negotiating or
25 prepared to agree to anything.

1 THE COURT: Let's stay with the grounds for relief
2 from stay.

3 MR. CARLEBACH: It was even represented in Richmond
4 Liberty's State Court papers that there was agreed to adjourn
5 because of negotiations. We can get the transcript of that.
6 But the point is that Mr. Backenroth (phonetic) was here. This
7 was all on the record, Your Honor.

8 The point is, Judge, that had this court been aware
9 under the circumstances of this case that the debtor's hands
10 were tied behind its back, unbeknownst to everybody, the
11 debtors hands were tied behind its back, it had two handcuffs
12 on its ability to negotiate because secretly a third
13 party -- the third party who wanted the property, who did a
14 deal pre-petition which may have been illegal -- put a lis
15 pendens that effectively, unbeknownst to the debtor, it
16 couldn't sell its property. Anybody looked at it would see a
17 lis pendens, that is an important fact that this court, had it
18 been aware of, would not have lifted the stay even, even if it
19 were extant the provisions of 362, the grant stay relief, this
20 court would have acknowledged that there was an unfairness
21 going on here.

22 That there was a -- every debtor in a bankruptcy case
23 has a right to seek a resolution with its creditors especially
24 its secured creditor. Whereas here the debtor could not seek
25 any resolution because a secret illegal lis pendens was put on

1 its property.

2 THE COURT: What is a secret lis pendens?

3 MR. CARLEBACH: A secret --

4 THE COURT: Isn't it an inherently public thing?

5 MR. CARLEBACH: Well the debtor does not --

6 THE COURT: Answer my question please and then you
7 can go beyond that. But I usually ask a question because I'm
8 really interested in the answer.

9 MR. CARLEBACH: When I say secret, I mean that they
10 didn't serve it on the debtor. They didn't let us know. They
11 didn't give us notice of pendency. They gave the secured
12 creditor notice -- the party that wanted to intimidate. They
13 didn't tell us about it. And we don't do regular title
14 searches on our property. Prospective purchasers do regular
15 title searches. The debtor does not do regular title searches
16 and by them putting a lis pendens and filing this lawsuit they
17 effectively chilled our ability to get a contract and to have
18 knocked them out of the game. That's what happened here.

19 These are the facts and circumstances. And what
20 we're asking for is that this court give us some time to flesh
21 out, you know, move forward with our plan, our contract of sale
22 and at the same time flesh out what they've done and
23 effectively get a ruling from this court that the secured
24 creditor has no liability from doing a deal with the debtor.
25 It flies in the face of the Bankruptcy Code that they could

1 secretly and through trickery put the secured creditor in the
2 situation that if they do a deal with us -- that where the
3 secured creditor is today -- if they do a deal with them, they
4 have been threatened, they will be sued.

5 THE COURT: Let's hear from the -- I think the
6 secured creditor is able to speak for itself. Is there
7 anything to cite a one of many statements of the standard
8 applicable here in this circuit, the major grounds now quoting
9 justifying reconsideration or an intervening change of
10 controlling law the availability of new evidence or the need to
11 correct a clear error or prevent manifest injustice.

12 Having the standard in mind, I take it that you are
13 arguing under --

14 MR. CARLEBACH: Two and four.

15 THE COURT: -- that the availability of what you
16 describe as new evidence or the prospect of manifest injustice
17 calls for reconsideration of the motion for relief from the
18 automatic stay. And I take it that the argument in Realty and
19 Realty I is an identical argument; is that right?

20 MR. CARLEBACH: There is also -- yes. And I also
21 wanted to mention and I put down as a --

22 THE COURT: How many of the properties were affected
23 by the lis pendens?

24 MR. CARLEBACH: All of them as far as I know.

25 THE COURT: All 13 properties?

1 MR. CARLEBACH: Yes. There's also -- I cited some
2 law in the adversary proceedings there's a decision from
3 Judge Gropper and there's case law out there that when -- I
4 don't have the name of the case with me -- when a creditors --

5 THE COURT: Is it in your papers?

6 MR. CARLEBACH: It's in the -- it's in my adversary
7 proceeding. It's actually --

8 THE COURT: You mean it's in the complaint?

9 MR. CARLEBACH: It's in the complaint. I actually
10 put the case law into the complaint.

11 THE COURT: You can't -- we, -- you know, the court
12 does its own research. We work very carefully with the briefs.
13 We do not go to adversary proceedings filed in Chapter 11 cases
14 on motions to reconsider in the Chapter 11 case to look for
15 case citations that may be of assistance. If there's a case
16 you'd like to me read, please find the cite and state it on the
17 record.

18 I hope you understand that as hard as we try to
19 prepare, that would simply be beyond, I think, a reasonable
20 expectation that the Court --

21 MR. CARLEBACH: Actually --

22 THE COURT: -- and I may have well read the case
23 anyway.

24 MR. CARLEBACH: It actually was appended to the
25 motion for reconsideration.

1 THE COURT: In that case then I've considered as part
2 of what we looked at.

3 MR. CARLEBACH: And the point was that in a
4 bankruptcy, a bankruptcy court has to look at, you know, if
5 somebody enters into a contract of any kind -- and this comes
6 up very often in the lease context of Section 365 --

7 THE COURT: Yes.

8 MR. CARLEBACH: -- which maybe on its face is not a
9 violation of the code. It flows from the ipso facto causes
10 anything which is an attempt to hinder a debtor in possession's
11 ability to exercise its rights and remedies in a bankruptcy
12 case is also void as being a violation of the code.

13 The contract -- the pre-petition contract entered
14 into by Richmond Liberty was -- and the way they framed their
15 complaint -- was clearly designed to hinder the debtor's
16 ability to resolve it's issues with the secured creditor.
17 That's something the debtor has the right to do.

18 And that's clearly what they say in their complaint
19 is that the debtor doesn't have a right to do, which as a
20 matter of law makes their entire pre-petition contract void.
21 But more importantly it's a legal argument that this court --
22 and again the debtor couldn't have been aware of it because it
23 wasn't aware of that whole dynamic at the time the lift stay
24 motion was being filed that there was this outside party --
25 this outside force that had designed an illegal contract which

1 was designed to hinder the secured creditors ability to do
2 business with the debtor.

3 And that is per say a violation of the code. And
4 once again -- again and it segue's into the manifest injustice
5 to allow this third party to get a lifting of the stay would be
6 a manifest injustice to the debtor because the debtor had every
7 right to negotiate with its secured creditor, unfettered,
8 unencumbered and they made sure that that didn't happen.

9 And now they --

10 THE COURT: What prevents the debtor from negotiating
11 last week, this weekend and right now?

12 MR. CARLEBACH: We have been negotiating. What
13 prevents the debtor from getting to yes with the secured
14 creditor is the fact that their lawsuit -- their contract is a
15 threat -- a threat of liability against the secured creditor,
16 as we speak.

17 THE COURT: But the lawsuit's filed in State Court
18 and exists whether or not there is a lis pendens you could even
19 argue that a lis pendens clarifies the situation by at least
20 indicating to the world who looks that there's a pending
21 lawsuit. Not a judgment, but a pending lawsuit. It doesn't do
22 more or less than that.

23 MR. CARLEBACH: If --

24 THE COURT: It's the lawsuit that creates a risk or
25 not, doesn't it? I guess I don't see the jacobian consequence

1 of filing a lis pendens in the face of a pending lawsuit that
2 reflects -- you haven't said inaccurately -- the fact of the
3 pending lawsuit.

4 MR. CARLEBACH: What is does -- what it does clearly
5 send is two things. There's two answers, Judge. First of all
6 it clearly sends a message to the world. Based on our lawsuit,
7 you can't buy this property. Because the lawsuit is you signed
8 a contract with us.

9 So the point is, it's a clear encumbrance on title.
10 If we were sitting, any prospective purchaser who sees this lis
11 pendens will say why would I get involved in this mess.

12 THE COURT: But with the lawsuit --

13 MR. CARLEBACH: Don't they have to come to this court
14 before they can -- don't they have to come to this court to get
15 permission to make a motion to lift the stay before they can
16 just encumber a debtor's property?

17 THE COURT: I have at least once seen such a motion.
18 But that's not the question before me today. And even were I
19 to reconsider it doesn't change what were the grounds or among
20 the grounds -- and are certainly adequate grounds -- at the
21 time and so far as I can tell remain adequate grounds today for
22 the granting for relief from stay.

23 There's no equity and there's no possibility to
24 confirm a plan over the objection of the secured creditor. So
25 if I reconsider today, as you've acknowledged, the grounds

1 haven't changed.

2 There may be other claims. There maybe -- you may
3 have state (indiscernible) I don't know. But it sounds like
4 what -- at a minimum -- everyone can agree we have is a lot of
5 litigation over a piece of property that's going to be sold.

6 I would be pleased to be part of a process to have
7 that including a conversation, to have that happen as
8 efficiently and effectively and at the best possible price as
9 possible. This court and this courtroom can be very useful in
10 that way. But I'm -- well I've asked a lot of questions and
11 you've been helpful in responding to them. I'm grateful for
12 that. I appreciate the frustration in the situation, but I --
13 I'm not sure that I yet see a basis for relief.

14 All right, anything further?

15 MR. CARLEBACH: I would just --

16 THE COURT: Or shall we hear from them?

17 MR. CARLEBACH: -- I would add finally, Judge, that
18 if you don't reconsider, the message to the world is that you
19 can engage in illegal conduct, you can violate the stay and get
20 a litigation advantage and interfere in a bankruptcy case.
21 That's the message that they're going to take from this that we
22 got -- we got away with violating the stay, we got what we
23 wanted. Because they're aware of the dynamic that's going on.

24 And I put that dynamic before the court in the
25 adversary proceeding and I'm saying to the court that this is

1 new evidence. It's a manifest in justice. We should be
2 allowed to negotiate with our secured creditor without
3 interference from a third party secretly violating the code
4 because they've never shown up in this courtroom before today.

5 And if they had this big interest in the property and
6 were filing lis pendens and lawsuits they should have come to
7 this court and asked permission. They knew the court would say
8 no. They knew that we would get the deal with the secured
9 creditor, so they went and did an end-run around this court's
10 jurisdiction and you shouldn't allow that.

11 THE COURT: Is there anyone else who would like to be
12 heard in support of the motion? No response. In opposition?
13 Let me hear from you, please.

14 MR. HEALEY: Good afternoon, Your Honor. I must
15 commend the debtors. Commend them for their courage -- their
16 courage in claiming that the argument they advance in support
17 of reconsideration it's anything but a rehash, an argument they
18 made at the lift stay hearing on March 6th.

19 Before I address that point, I want to focus first on
20 the controlling law. In the Second Circuit, motions for
21 reconsideration are generally denied unless the Movant can
22 point to a controlling decision or fact that the court
23 overlooked that might reasonably be expected to alter the
24 conclusion reached by the court.

25 Under this standard, the courts hold that motions for

1 reconsideration are not a vehicle for re-litigating old issues;
2 for presenting the case under a new theory or securing a
3 rehearing on the merits for otherwise taking a second bite of
4 the apple. Tested under these standards, Your Honor, the Judge
5 is -- the debtor's motions fail.

6 At the lift stay hearing back on March 6th, the court
7 ruled that the lender had satisfied both prongs for relief from
8 the automatic stay under Section 362(d)(2). The court found
9 that the debtors lacked equity in the property and the court
10 also found that the debtors properties were not necessary for
11 an effective reorganization that is in prospect.

12 In a motion for reconsideration, debtors do not
13 challenge either one of these conclusions, much less point to
14 any controlling decision or fact that the court overlooked when
15 it ruled that the lender had satisfied the test on the
16 362(d)(2).

17 THE COURT: In substance their argument is that it
18 would be manifestly unjust for a stay violation which sometimes
19 is brought to the court's attention through the co-provisions
20 directed to stay violations -- and it probably would be more
21 helpful if the focus is the stay violation -- that that stay
22 violation has so tainted the process that the debtor in effect
23 lost the benefit of its bargain -- which was even though stay
24 relief was warranted -- it got 45 days to try to do its own
25 sale.

1 A not uncommon way to resolve a situation of that
2 nature and a productive way sometimes. It's in everyone's
3 interest to have a prompt, consensual, good value kind of sale.
4 So that their argument seems to me to be not so much that the
5 order was wrong or so far as I can tell that it would go
6 differently today if I reconsider -- which doesn't necessarily
7 mean change my mind -- but that that stay violation is just
8 enough of a problem and enough of an offense to the bankruptcy
9 process that we should reset everything back several months in
10 effect and let the debtor try again to sell the property on its
11 own terms.

12 MR. HEALEY: I don't believe under the circumstances
13 that under the applicable tests that such relief is permitted
14 or possible. These debtors unless -- did not oppose the motion
15 for relief from the automatic stay. At least two times during
16 the course of the hearing on March 6th, the debtors expressly
17 admitted that the grounds existed for vacating the automatic
18 stay at 362(d)(2).

19 The argument that they now advance for
20 reconsideration is precisely the same argument they advanced
21 when they asked the court to defer entry of the orders lifting
22 the automatic stay. On pages eight and nine and 38 from the
23 transcript of the March 6th hearing the debtors raised the same
24 substance of argument they're now making now in their motion
25 for reconsideration. Nearly verbatim.

1 Then, as now, they speculated at possible nefarious
2 conduct by some third party -- that third party Richmond
3 Liberty LLC. They complained about the filing, the lis
4 pendens, against their properties during -- after the filing of
5 the Chapter 11 petitions.

6 They surmised that the lawsuit brought by Liberty --
7 Richmond Liberty against the lender was forcing the lender to
8 prosecute the lift stay motions and they alleged that the
9 actions thwarted the efforts -- that their efforts to sell the
10 property otherwise negotiate.

11 Those were the arguments they make now. It's the
12 argument they made then -- the March 6th hearing.

13 THE COURT: All right, but -- I have that transcript
14 before me. Could you indicate again the pages?

15 MR. HEALEY: Yes. Page eight and nine -- eight
16 through nine -- and then again on page 38.

17 THE COURT: They actually filed a lis pendens against
18 the debtors property in Chapter 11 and sued not the debtor but
19 sued the mortgagee. Line 23 and 24.

20 So this was not unknown. I think we can all agree
21 this was not unknown at the time of the March 6th hearing.
22 It's on the record.

23 MR. HEALEY: And again it's re-iterated by
24 Mr. Carlebach on page 38 of the transcript as well, Your Honor.

25 THE COURT: All right. Doing an end-run around the

1 jurisdiction of the court -- same words. All right, please
2 continue.

3 And there's two questions before the court whenever
4 there's a question of reconsideration and I have to say, viewed
5 against the number of decision that the court makes they're
6 relative rare. But I, in a way, almost welcome them because
7 they come up -- they end typically in a setting where the facts
8 and circumstances are exceptional consequences to the case or
9 to the parties that's why you make the motion.

10 And to give the court a chance, at this point, some
11 months later -- many months later, March to July -- to be sure
12 frankly that we got it right. Because, you know, while one
13 always tries as hard as one can to make ones best possible
14 argument or the best possible decision on the record, when you
15 look back sometimes you'll see things differently.

16 And the opportune to look back at a record with the
17 benefit of the passage of time and additional incites on the
18 parties can be useful. So it is with that frame of mind that I
19 take up the question not only of whether grounds to reconsider
20 are there, but to put it bluntly, whether I've got it wrong.
21 If I got it wrong, then the getting wrong can be fixed.

22 Whether or not one -- I guess I would view that as a
23 manifest injustice if I look at a record and say well without
24 doubt I now conclude as of today, July 13th, that what I
25 decided was wrong. Then not fixing that would be unjust by my

1 metric. Whether or not it would be a manifestly unjust by some
2 other matter, so.

3 MR. HEALEY: What was true back at the time of the
4 lift stay hearing is still true today, Your Honor. The debtors
5 lack equity in a property as based on the appraisals that we
6 produced.

7 THE COURT: All right, anything further?

8 MR. HEALEY: Your Honor, we rest on the papers.

9 THE COURT: All right. Who else would like to be
10 heard against the motion? All right, good afternoon.

11 MR. FRIEDMAN: Good afternoon, Your Honor. Greg
12 Friedman from Kriss & Feuerstein on behalf of Richmond Liberty,
13 LLC.

14 I just had a letter in front of me with some law
15 regarding --

16 THE COURT: If you need to look at something you can
17 look at it.

18 MR. FRIEDMAN: Yeah, I just had a two seconds. I
19 just wanted to bring to the court's attention.

20 THE COURT: If it's the letter that's on the court's
21 docket, we can print copies for the parties?

22 MR. FRIEDMAN: No, no. It was just a letter I had
23 with some law regarding with respect to lis pendens and the
24 automatic stay.

25 The debtor makes much of this lis pendens and the

1 illegal conduct of Richmond Liberty. And -- so they brought a
2 motion -- I mean, they brought an adversary proceeding against
3 Richmond Liberty -- which is not the subject of today's
4 hearing.

5 And Richmond Liberty, you know, has been painted, you
6 know, in a very negative light here and we fully plan on
7 showing that these claims have absolutely no merit.

8 Many cases in the Second Circuit have found that a
9 lis pendens is not a violation of the automatic stay and merely
10 just puts the world on notice as Your Honor previously stated
11 and is not an encumbrance on property.

12 I just had it in front of me, if you just give me one
13 second. Just a secured -- and even Judge Duberstein himself
14 heard a decision In re Coto (phonetic) then there was also In
15 re Rhodes in the Southern District in New York which provided
16 that -- and I don't have those cites in front of me -- but we
17 will address them in our response to the adversary proceeding
18 complaint later on.

19 THE COURT: So you think -- your client got a lis
20 pendens on a debtor's asset during the pendency of a Chapter 11
21 case without getting relief from stay; is that correct?

22 MR. FRIEDMAN: That is correct, Your Honor.

23 THE COURT: Do you think that was consistent with the
24 law?

25 MR. FRIEDMAN: We do think it is consistent with the

1 law and we plan to bring that --

2 THE COURT: You didn't think you needed stay relief
3 to do that?

4 MR. FRIEDMAN: -- we plan to bring it to the court's
5 attention when -- if and when we respond to the complaint.

6 THE COURT: To bring what to the court's attention?

7 MR. FRIEDMAN: That there -- it wasn't a violation
8 of the automatic stay and the automatic stay isn't even
9 implicated when a lis pendens is filed on property as it's --
10 as it's not an encumbrance on property. It merely puts the
11 world on notice.

12 And there's numerous decisions out there in the
13 Second Circuit by both -- by among Judge Brozman and Judge
14 Duberstein himself in the Eastern District that filing a lis
15 pendens on property puts the world on notice and does not
16 implicate the automatic stay.

17 THE COURT: At least once I entered an order granting
18 relief from the automatic stay to file a notice of pendency,
19 but many times more than once I have entered orders granting
20 relief from the automatic stay that some would call comfort
21 orders that were not necessary but were sought by the parties.

22 I'm not expressing a view in one direction or
23 another. I just know that as recently as January of this year
24 the issue became before me and was decided in the direction of
25 issuing that order granting the stay relief.

1 I guess what I'm struggling with is whether and to
2 what extent that isn't more appropriately addressed in the
3 different context of the proceedings of the debtor has brought
4 as opposed to some how grounds to revisiting the stay relief
5 order and the -- and reaching a different conclusion.

6 So, all right -- anything further?

7 MR. FRIEDMAN: No, only that we'll be -- we shall be
8 addressing all the automatic stay issues and other causes of
9 action set forth in the complaint in the adversary proceeding
10 brought forth by the debtor.

11 That aside, we don't believe that these automatic
12 stay issues are anything new here.

13 THE COURT: Well it is clear that they're in the
14 transcript.

15 MR. FRIEDMAN: On page 38 as the court noted. That
16 these issues have all been raised and we'll be addressing the
17 merits of the adversary proceeding shortly.

18 THE COURT: Okay.

19 MR. CARLEBACH: Your Honor if I may briefly respond.

20 THE COURT: Please.

21 MR. CARLEBACH: With respect to Mr. Healey's
22 comments. Something has changed. We have a sale. We have an
23 amended plan and we have a sale. We have sitting here in court
24 today is a prospective purchaser who has put down a hard
25 deposit of almost \$500,000. And we have a contract of sale

1 which is even superior to the pre-petition contract that the
2 mortgagee entered into with Richmond Liberty.

3 What's interesting is that as soon as the 45 days was
4 up in this court, the lis pendens was removed in that court. I
5 think that the court has to look at the lis pendens in this
6 case with even closer scrutiny than it would otherwise because
7 the question is --

8 THE COURT: Is it before me?

9 MR. CARLEBACH: Well in a sense it is because I'm
10 moving for reconsideration based on the conduct that they
11 engaged in which is that they were tracking this court's
12 activity and they filed the lawsuit, they filed the lis pendens
13 just after we represent on the record -- the mortgagee
14 represents on the record that it's in negotiations -- as
15 referenced in their papers.

16 They filed the lis pendens and then they withdraw it
17 after they get -- after the 45 days is up and after they get a
18 more oppressive agreement with the secured creditor, they pull
19 it back. Again -- and then as soon as they withdraw it, we get
20 a contract of sale with Mr. Deluca.

21 Again all of that points to one thing. This lis
22 pendens and the lawsuit was designed to interfere with our
23 negotiations with our secured creditor in the bankruptcy to
24 send a very loud and clear message if you do business with
25 anybody but us we will sue you; we will litigate against you;

1 you won't be able to have a clear title and injunction to the
2 property. I mean, it's as clear as day.

3 And we now -- once they have withdrawn, we now have a
4 plan and we're facing a secured creditor who is, you know,
5 under threat of litigation, have to enter into a more
6 oppressive agreement with them. We want to knock that out. We
7 want our plan to go forward.

8 And I think that if the court allows for some
9 expedited discovery for the facts to come out, it'll become
10 clear that there was an interference with the bankruptcy
11 process --

12 THE COURT: You mean in your adversary proceeding?

13 MR. CARLEBACH: Correct.

14 THE COURT: Have you requested expedited discovery?

15 MR. CARLEBACH: Well we've served the complaint and
16 we have waited for -- I have not waited for an answer. They've
17 asked for a limited amount of time to -- extended time to
18 answer. I didn't think it would be appropriate to get
19 discovery -- I mean, maybe in the context of this contested
20 matter we could do discovery on it.

21 But again, then you have the issue of repetitive
22 proceedings. But the point is that there's no prejudice to
23 allow our plan, you know, the second prong of the relief that I
24 asked for yesterday was a standard application for combined
25 disclosure statement and plan.

1 THE COURT: That issue is not before me right now.

2 MR. CARLEBACH: I'm not asking for the relief, I'm
3 just suggesting that if the court grants the reconsideration
4 motion there's no prejudice because we have merely asked that
5 we be put on the same -- now that we have been finally able to
6 do a contract and to do a real plan because of the obstacles
7 that they've thrown in our way have disappeared, we can now put
8 our plan forward -- our sale plan forward.

9 If the court wants to conduct an open sale process,
10 we have no objection to that either. But let it be fair. Let
11 not one party who has engaged in illegal contract and conduct
12 in violation -- if not the letter, the spirit of the code --
13 and sought to interfere with the bankruptcy process. Let us
14 get our --

15 THE COURT: The debtor wants to sell the property
16 through an auction process, in effect, with the stalking horse
17 bidder subject to higher and better. The secured creditor
18 wants to sell the property through an auction that is presently
19 scheduled for Thursday.

20 The parties agree the property should be sold at
21 auction, it seems, to the highest bidder.

22 MR. CARLEBACH: Your Honor, --

23 THE COURT: Am I right?

24 MR. CARLEBACH: -- our plan does not call on it's
25 face for stalking horse. It just has --

1 THE COURT: Just an auction.

2 MR. CARLEBACH: It's a sale plan.

3 THE COURT: An auction is scheduled for -- everyone
4 agrees the property should be sold. I take it the debtors
5 concern is that you'll get a better result in a different kind
6 of sale than a foreclosure sale; is that right?

7 MR. CARLEBACH: We certainly would get a better
8 result and what we want is a non-collusive process where the
9 mortgagee is --

10 THE COURT: What's collusive about a foreclosure
11 sale?

12 MR. CARLEBACH: Right now the mortgagee is compelled
13 to credit bid its claim to -- in favor of the -- it's compelled
14 to cooperate with one party because of this contract that they
15 have. So you can't have a real open sale. We want an open
16 sale process where any party can bid.

17 I mean the secured claim in this case, as I believe
18 they've based on their proof of claim is about \$10.5 million.
19 If necessary, we can start the bidding at 10.5 million.

20 But what we want --

21 THE COURT: I'll give you five minutes to talk to the
22 parties and see if you can come up with something that makes
23 sense to all the parties on a commercial basis while I also
24 review the file and the arguments that you've made.

25 I'd like you to bring to closure your reply argument.

1 I know it's been more than an hour already. You've been very
2 patient with all of my questions and I've said that to all of
3 you.

4 I will give you a few minutes to confer, but I want
5 to let you know that's the plan for this evening because I owe
6 you a decision. You pointed out at the outset how important it
7 was for the court to decide today and I'm not going to not do
8 that. The motion has been heard twice now.

9 But I see always the prospect. Maybe this tells you
10 more about what I'm looking for than anything else. But when
11 everyone's talking about a sale and an auction process and it's
12 just a question of -- the sale is scheduled for Thursday. It's
13 not to close on an existing contract, it's a foreclosure sale,
14 is it not?

15 MR. HEALEY: Correct.

16 THE COURT: Okay. All right. I've got my work to
17 do. You've got a little bit of work yourself. Be back in 15
18 minutes, okay?

19 Mr. Carlebach, anything further?

20 MR. CARLEBACH: No, Your Honor.

21 THE COURT: It seemed you were getting into
22 different -- the realm of status and how we might have hearings
23 on final disclosure statement that we're not -- that's not this
24 motion and I need to be focused on this motion.

25 MR. CARLEBACH: I would just point out that the

1 foreclosure sale is scheduled for Thursday. As far as --

2 THE COURT: Well I'm aware.

3 MR. CARLEBACH: -- as far as the secured creditor is
4 concerned, they're constrained to credit bid their mortgage and
5 give the property over to Richmond Liberty under their
6 contract. So it looks like an open foreclosure sale, but again
7 they have a contract which they are constrained to give the
8 property to Richmond Liberty.

9 Which, once again, Richmond Liberty's clause are all
10 over every item that's going on here because of that contract.

11 THE COURT: Mr. Carlebach, I'd put the rhetoric to
12 the side for the moment. Thank you.

13 (Court in recess from 5:02 p.m. to 5:43 p.m.)

14 THE COURT: Be seated. Thank you for the time to
15 review the file. I know the importance of the parties of
16 addressing the issues in a prompt way. Is there anything
17 further to add to the record?

18 MR. HEALEY: No, Your Honor.

19 THE COURT: Mr. Carlebach, it's your motion.
20 Anything to add? Or motions, I should say. There are two
21 motions before the court to reconsider grants of relief from
22 the automatic stay in the Liberty Towers Realty and the Liberty
23 Towers Realty I case. The parties have argued them together.
24 I shall rule on them together, of course, separate orders shall
25 enter.

1 MR. CARLEBACH: Your Honor, I did want to just add
2 one point. You mentioned -- the words you used were did I get
3 it wrong. It was in terms of how you characterized your
4 decision on the motion to reconsideration.

5 I just wanted to point out to the extent that the
6 basis of the motion is new evidence and even the manifest
7 injustice is also based on new evidence, we do not believe that
8 you got it wrong in any way. But it's simply that there are
9 new facts and circumstances that have come to light which would
10 be a basis for granting the relief that we ask for.

11 THE COURT: Okay. Which is to reconsider and not
12 grant the relief that was asked for by the Movant in the prior
13 motion; is that correct?

14 MR. CARLEBACH: Correct.

15 THE COURT: Okay, I understand. When I say did I get
16 it wrong, I don't say it in the sense that parties would some
17 how be inappropriately critical of the court. It's your job to
18 point out when courts make mistakes. It's absolutely your job.

19 MR. CARLEBACH: I say in this instance, we're not
20 basing on the court's missing controlling law or anything like
21 that. It's simply based on new facts and circumstances that
22 have come to light.

23 THE COURT: All right. The motions before the court
24 are -- would you like to respond? I think we have a basis to
25 proceed.

1 All right. The matters before the court are the
2 motions to reconsider grants of relief from the automatic stay
3 concerning certain real property that is the property of these
4 two Chapter 11 debtors -- Liberty Towers Realty, LLC and
5 Liberty Towers Realty I, LLC.

6 And since the parties have acknowledged and the
7 record indicates the issues are similar; the arguments are
8 similar and the court's rulings in the two matters shall be
9 stated simultaneously, two orders shall issue.

10 The motions are before the court. This is our second
11 hearing. We've benefitted from hearing them not only in early
12 June at the conference of the parties, but again today and at
13 some length. And with a lot of questions from the court -- I'm
14 grateful for your responses.

15 The background of the matter in a general way, I'll
16 summarize briefly. These debtors each owned real property,
17 unimproved commercial real estate located on Staten Island with
18 respect to Liberty Towers Realty, LLC. It's a single parcel --
19 well it's various parcels identified in the filings. The same
20 with Liberty Towers Realty I. The particular lot and block
21 numbers are set forth in the record.

22 The property is not developed and generates -- none
23 of the properties generate any income. They are the subject of
24 this Chapter 11 case and as the record indicates, there have
25 been efforts to reorganize along different paths.

1 Ultimately there was made in the case a motion for
2 relief from the automatic stay. That motion was made in both
3 cases on January -- on or about January 12th, 2015. It was
4 heard on February 3rd and again on March 6th.

5 On consent of the parties, the respective debtors
6 were directed -- the Movant was directed to settle an order on
7 45 days notice to allow the respective debtors time to attempt
8 to secure a buyer for the property.

9 On or about April 28th, 2015 this court entered
10 orders in each of the cases vacating the automatic stay and
11 allowing W.F. Liberty, the lift stay Movant, to pursue its
12 rights under the applicable law with respect to these parcels
13 and this piece of real property in each case.

14 A couple of weeks later, on May 12th, 2015, the
15 debtor filed this motion to reconsider. The court held an
16 initial hearing on the motion in June -- I believe on June
17 9th -- on these motions and I continued hearing and extensive
18 argument this afternoon as well.

19 The debtor argues, among other things, the following
20 in support of the motions to reconsider. The debtor knows that
21 the court has the authority to alter or amend a judgment
22 pursuant to Federal Civil Procedure 59(e) and notes that the
23 debtor consented to the entry of the order granting W.F.
24 Liberty stay relief on condition with the understanding that
25 the debtor would have this 45 day period to work toward

1 obtaining a contract of sale for consensual sell of the
2 properties.

3 And to implement that, W.F. Liberty was directed to
4 settle a proposed order for stay relief -- granting the stay
5 relief on 45 days.

6 The debtor, as matters progressed, the debtor argues
7 that it was unable to obtain a contract of sale during that 45
8 day period and that the reason or a significant reason was an
9 illegal lis pendens filed against these properties by a third
10 party. Who believed it had an interest in the property.

11 The lis pendens was done, the debtor argues, in
12 accordance or in conjunction with a lawsuit filed by that third
13 party against the mortgagee in State court seeking to enforce
14 the terms of a pre-petition contract of sale of the property.
15 Debtor described this in some detail on the record. I note
16 that there is -- there has been suggested but -- well I'll just
17 say that even in arguably the absence of direct evidence of
18 these State court proceedings before this court, I'm going to
19 take them as part of the record and proceed as if matters there
20 are and I have no reason to doubt preciously as the debtors
21 counsel has described them.

22 The debtor further argues in support of the relief it
23 seeks that once the lis pendens was removed, the debtor was
24 able to obtain what it describes as a hard contract of sale --
25 which is filed as an attachment to the motion -- at a sale

1 price set forth in Exhibit C of, I believe, \$9 million with a
2 significant several hundred thousand dollar down payment. That
3 is to say, plainly, a serious contract.

4 The debtor has also, since the motion was granted and
5 the order entered, filed an amended plan of reorganization and
6 disclosure statement and intends to file additional motions
7 seeking additional relief with respect to various asserted
8 legal actions of the unnamed -- up to this point unnamed now
9 identified third party who allegedly violated the automatic
10 stay.

11 For all these reasons the debtor argues that the
12 orders, in each of these two cases, vacating the automatic stay
13 be of themselves vacated and that the debtor be given -- well
14 first that they be reconsidered and upon reconsideration
15 vacated so that the debtor has an opportunity to demonstrate
16 the proposed plan is feasible and confirmable.

17 The debtor has acknowledged today on the record of
18 this hearing that an argument as the debtor acknowledged
19 previously that the grounds relied upon, among others, by the
20 court at the time of the initial motion -- that is that there
21 is no equity apparently in this asset for the debtor's Chapter
22 11 Estate in either case, but a prospect of reorganization
23 successfully to be confirmed in view of the ongoing intention
24 to oppose the plan that has been asserted and reaffirmed on the
25 record today by W.F. Liberty.

1 The court notes that in reviewing the -- well I turn
2 to the response of W.F. Liberty to the motion of the papers,
3 which are very helpful as with the debtors speak for
4 themselves. I'll summarize some of the highlights, some of the
5 points made.

6 W.F. Liberty argues that the debtor has raised new
7 arguments, but rather restates arguments previously raised at
8 the hearings on the motion for stay relief, including the March
9 hearing. A transcript of which is available in the record of
10 this motion at hearing on March 6th.

11 The objector, the Movant, on the lift stay motion
12 W.F. Liberty also argues that on March 6th -- the last hearing
13 on the motion for stay relief -- the debtor did not dispute
14 that it lacked equity in the property nor that it would be
15 impossible for the debtor to confirm a plan over the objection
16 of W.F. Liberty as it controls both the secured notes, secured
17 classes of claims. So its consent would be a necessary piece
18 of confirmation.

19 The -- W.F. Liberty further argues that the debtor
20 raised the same concerns that are raised in this motion to
21 reconsider. Namely the filing of the lis pendens against the
22 property and the alleged illegally State court action pending
23 against the debtor. And the transcript does confirm that this
24 is so.

25 For example, at page eight or so of the transcript

1 there is a reference -- the debtor's counsel indicates that he
2 was shocked to learn that there was a lis pendens filed against
3 the debtor's property in Chapter 11 and that the mortgagee was
4 sued in the option contract.

5 The debtor's counsel makes that same point some pages
6 letter -- later -- excuse me for miss speaking -- at page 38
7 where debtor's counsel argues as he argued today that the
8 bidding was chilled -- that the prospect of the sale was
9 chilled, I should say not bidding. Sorry for misstating the
10 record. And that this is an effort, in effect to do an end run
11 around the jurisdiction of this court. All those points made
12 in March of 2015 in the original hearing of this motion.

13 W.F. Liberty argues further that the standard under
14 Federal Civil Procedure 59(e) -- applicable here in bankruptcy
15 as well -- cited by the debtor in support of the motion -- is a
16 strict standard and a high standard with relief granted
17 generally only if the court over looked a controlling decision
18 or factual matter that would have materially influenced the
19 decision.

20 The standard is high for a good reason because it
21 needs to -- it needs to be high so that motions are argued and
22 decided once and if they're wrongly decided and appealable,
23 they can be appealed. But parties are urged by courts not to
24 attempt to make repetitive arguments on issues that have been
25 thoroughly considered and decided by a court.

1 Here, W.F. Liberty argues the debtors made no new
2 arguments or pointed to any new facts that the court did not
3 consider before granting stay relief. And further, or even
4 more that the arguments made by the debtor, W.F. Liberty
5 argues, are relevant to the court's conclusion that both of the
6 prongs required for stay relief under Section 362(d)(2) have
7 been satisfied. And as the debtor's counsel candidly
8 acknowledged today that that has not changed.

9 So I turn to the legal standard, Federal Civil
10 Procedure 59(e) applicable here pursuant to Bankruptcy Rule
11 9023 provides that a motion to alter or amend a judgment shall
12 be filed no later than 14 days after the entry of a judgment.
13 Pursuant to Federal Civil Procedure 54, the order that this
14 court entered constitutes a judgment that may be reconsidered
15 under Rule 59 because it is an order from which an appeal lies.
16 Crown v. Burton, In re Swift, 2014 Westlaw 103229, at star 3,
17 decision of our chief judge, Judge Craig.

18 Unlike Rule 60, Rule 59 it does not prescribe
19 specific grounds for granting a motion to alter and amend an
20 otherwise final judgment. So found the Southern District of
21 New York, District Court in YouTube Home Entertainment, Inc.,
22 versus Limen Music and Video Training reported at 2005 Westlaw
23 2230454, at star one.

24 According to the Second Circuit's decision in Munaf
25 reported at 381 F.3rd 99 at 105. As the Second Circuit has

1 said and as the parties do not dispute, now according the major
2 grounds justifying reconsideration or an intervening change of
3 controlling law, the availability of new evidence or the need
4 to correct a clear error or prevent manifest injustice for
5 Atlantic Airways Limited versus National Mediation Board, 956
6 F.2d 1245, 1255, Second Circuit 19 -- yes 1992. Sorry.

7 As the courts have further noted including the Second
8 Circuit the standard, no quoting, for granting such a motion is
9 strict and reconsideration will generally be denied unless the
10 moving party can point to controlling decision or data that the
11 court over looked matter, in other words that might reasonably
12 be expected to alter the conclusion reached by the court.

13 Schreider versus C.S.X. Transportation Inc. 70 F.3d 255 at 257,
14 Second Circuit 1995.

15 Courts narrowly construe this standard and apply it
16 strictly against the moving party so as to "dissuade repetitive
17 arguments on issues that have already been considered fully by
18 the court." Calibing Cove versus E.I. Dupont, Gene and Moores
19 and Company 624 F.2d -- excuse me -- F. SUP 747 at 748;
20 Southern District of New York, 1985.

21 And on the motion to reconsider facts not raised at
22 the original hearing that could have been raised will not be
23 considered facts of the court overlooked. Voting in substance,
24 Chief Judge Craig, again, in In re Flatbush Square, 508 B.R.
25 563 at 571.

1 The Second Circuit has stated that where 59 is not a
2 vehicle for re-litigating old issues, presenting the new case
3 under new theories, securing a rehearing on the merits or
4 otherwise taking the "second bite of the apple." Seacorp Corp
5 versus J.B.J. Corp, 157 F.3d 136 at 144, Second Circuit 1998.

6 Similarly a party who realizes -- now quoting --
7 "with the acuity of hindsight that he failed to present his
8 strongest case at trial, is not entitled to a second
9 opportunity by moving to amend a finding of fact or conclusion
10 of law" U.S. versus Local 1804-1, 831 FSUP 167 at 169.

11 As the Second Circuit has observed, "Re-litigants
12 have once battled for the courts decision, they should neither
13 be required nor without good reason permitted to battle for it
14 again." Danick versus Glutenco, 327 F.2d 9449, 53 Cert denied
15 377 U.S. 934 in 1964. So a good long ago, but still good
16 guidance from the Circuit.

17 I note that -- as I noted during counsel's
18 argument -- that while I respect and of course I follow the
19 guidance from the circuit, I also take the opportunity of
20 motion to reconsider, to consider the record and pose to myself
21 the question, as the record poses the question, as the motion
22 poses the question, was there a mistake here. Should this --
23 is this decision not the correct decision? Did I enter an
24 order that I would enter differently if I were to enter it
25 today?

1 And I don't ever shirk from the opportunity to ask
2 that question of a record, of myself and whether or not a
3 technical narrow application of the standard of opening the
4 door to reconsideration is met. I view such a motion as an
5 invitation and an opportunity to make sure that I would make
6 the same decision today and even where the grounds and the
7 standard applicable may not appear necessarily to give rise to
8 grounds for reconsideration if the entire record suggests that
9 perhaps focusing on the manifest injustice component that a
10 mistake was made and needs to be correct, I will not hesitate.

11 And I say that emphatically. I will not hesitate to
12 reconsider and revise and amend my own order. I don't think
13 I'd be doing my job if I did anything other than that.

14 I note briefly the standard under Federal Rule Civil
15 Procedure 60, relief from a judgment or order made applicable
16 in Bankruptcy Courts by Bankruptcy Rule 9024. This rule
17 provides that a court may relieve a party from a final order on
18 grounds of newly discovered evidence that with reasonable
19 diligence could not have been discovered in time to move for a
20 new trial under Rule 59(b).

21 This rule permits a court to relieve a party from a
22 final order on grounds of fraud whether previously called
23 intrinsic or extrinsic. Again quoting misrepresentation or
24 misconduct by an opposing party.

25 As this court found in In re Taub, reported at 421

1 B.R. 37 at 42, as the Second Circuit has found, since 60(b)
2 allows extraordinary judicial relief that is invoked on the
3 opponents showing exceptional circumstances, it is strictly
4 applied for tenant that a courts final judgement should not
5 lightly be reopened.

6 All right. I turn to the grounds for reconsideration
7 and note again that they are the changing controlling law, the
8 availability of new evidence or the need to correct clear error
9 or prevent manifest injustice. Virgin Atlantic, 956 F.2d at
10 1255.

11 The debtor suggest in substance that the lis pendens
12 and its consequences were new evidence. But, of course, as the
13 record shows and the debtor can't persuasively deny, these
14 matters were raised by the debtor and were raised in strong
15 terms during the March 6th hearing on the motion for stay and
16 relief. The debtor may suggest that in substance, the newly
17 discovered evidence or the new facts or the new record include
18 not only that lis pendens but its consequences.

19 And the consequences include that now that the lis
20 pendens or upon the -- again taking their statements on the
21 record at their face value -- upon the withdrawal or removal or
22 lifting of the lis pendens a hard contract was entered into.
23 I'll consider that as new evidence. That's -- I take that to
24 be something that was not known before because it hadn't
25 happened before, but I do question whether the prong of new

1 evidence is met by the record before me and note again that a
2 review of the transcript does show that the same facts and the
3 same arguments and even some of the same language was used by
4 counsel then and now.

5 I note that no party has pointed to nor has the court
6 found a change in controlling law. I note that I myself
7 embrace the opportunity to correct a clear error and I think
8 it's probably always my job to prevent a manifest injustice
9 when it's within my jurisdiction to do -- to do that.

10 I note that the standard here is a high one that
11 narrow construction is the rule. I look at the entire record
12 and I struggle to see whether manifest injustice is present
13 here. The lis pendens that was present that is at the core of
14 much of the argument was not a secret. It arose from a case
15 that was, itself, not a secret.

16 There's no suggestion of fraud or inappropriate
17 behind the scenes conduct leading to that. None of a nature in
18 all events that's persuasive to the court that the high, high,
19 high standard of manifest injustice would be invoked.

20 The record seems to suggest at most that the debtor
21 acknowledged there were grounds for stay relief; acknowledges
22 today there are grounds for stay relief, but also wanted the
23 opportunity and it's a reasonable opportunity to seek, to try
24 to achieve a better result for the debtor and for the estate by
25 undertaking the sale on its own and the debtor couldn't do it

1 in the 45 days that the debtor got -- which was the time period
2 within the debtors contemplation of a reasonable time period.

3 And now the debtor would like, perhaps, to revisit
4 the terms and conditions of what was a reasonable opportunity
5 to try to sell on its own and to sell through a plan and the
6 debtors made some steps, but those steps come after the stay
7 relief order has been entered; a foreclosure proceeded and a
8 foreclosure sale was scheduled.

9 And that brings us to today. I am constrained to
10 conclude that on the record, the debtor has not shown that on
11 the basis of a changing controlling law; on the basis of
12 availability of new evidence; on the basis of the need to
13 correct a clear error prevent manifest injustice, there are
14 grounds to reconsider, but noting the importance of the issues
15 to the parties and just in case I'm wrong on that conclusion,
16 the right to reconsider today I presume -- I in affect pick up
17 where I left off with a motion for relief from the automatic
18 stay.

19 But based on the record made before me, you know, to
20 and through today and this evening -- 6:05 p.m. on July 13th,
21 2015 -- and I note that with respect to Section 362(d)(2) of
22 which the parties have noticed and pursuant to which the Movant
23 has moved there are two prongs to stay relief under Section
24 (d)(2) of 362 of the Bankruptcy Code that the debtor does not
25 have an equity in the property and that the property is not

1 necessary to an effective reorganization which has been viewed
2 as, in this circuit, as an reorganization that is reasonable in
3 prospect.

4 And I conclude today as I concluded previously in
5 light of the entire record, including the new information and
6 argument brought forth today, that there are grounds for relief
7 from the automatic stay in that the debtor does not have equity
8 in the property and that the property is not necessary to an
9 affective reorganization that is reasonably in prospect because
10 while the debtor has made some strides, the secured creditor
11 has not wavered in its position that it would not support the
12 plan.

13 And since it holds a position in a case that permits
14 it to exercise and appears control over confirmation, as the
15 debtor's counsel has acknowledged, the same criteria that
16 supported stay relief then supports stay relief now.

17 So for the reasons reflected in the record, the
18 motion to reconsider in each case is denied. And in the
19 alternative, reconsidering the motion for stay relief, I find
20 that stay relief remains warranted based on the entire record.

21 It's not to say that it doesn't make sense for the
22 parties to figure out the most affective way -- if there is an
23 affective way to proceed with respect to realizing value in
24 this property. You've got lots of tools and lots of litigation
25 apparently pending in other courts. I understand there is a

1 sale scheduled for Thursday.

2 That does bring us to the remaining motion -- and the
3 court will so order the record and if I conclude that it's
4 appropriate to issue an appropriate written order -- and it
5 probably makes sense. I'll try to get that order -- not
6 summarize the grounds -- but which will incorporate by
7 reference the grounds stated on the record of today's hearing.

8 I guess the remaining question is how to proceed with
9 respect to the motion filed on Friday night. I don't see a
10 basis in that record yet for interim relief and I know,
11 Mr. Carlebach, the sale is on Thursday.

12 I don't know if the parties have conferred on
13 whatever steps might be agreeable to try to approach this in a
14 business way and I encourage that. I've offered to conference
15 previously with the parties and I repeat the offer.

16 But otherwise, I think we've gone about as far as we
17 can today and I'll be happy to hear from the parties about what
18 schedule might permit a meaningful consideration of the
19 emergency motion. If the suggestion on the record is that it
20 needs to be considered in the next 48 hours, I think it's going
21 to be difficult to pay appropriate attention to the
22 requirements of due process, but it's always my job to do the
23 best I can to meet the needs of the cases.

24 Mr. Carlebach, I know you're disappointed, but I
25 still need to hear from you. I'm sorry. And I always feel

1 after a long oral decision I owe an apology to parties. It
2 can't be fun to listen to a court give its decision like that.

3 But, Mr. Carlebach?

4 MR. CARLEBACH: Yeah, I mean just in terms of the
5 emergency motion. Obviously we would need to -- it would need
6 to be heard over the next -- as Your Honor says -- over the
7 next 48 hours. And I guess the most important argument is
8 obviously the irreparable harm that we would suffer by virtue
9 of the foreclosure sale going forward.

10 In terms of the likelihood of success on the merits,
11 again I'm not sure whether Your Honor's view would differ very
12 much from the analysis that you've made in the --

13 THE COURT: The automatic stay issue was a tough one
14 for the debtor based on this record. And what you need is the
15 reimposition of the stay. What you seek first and foremost in
16 Roman I. I think it's a very difficult obstacle in this
17 situation.

18 MR. CARLEBACH: Again, I think that -- I may not have
19 referenced it, but we'd obviously be moving under Section
20 105 -- which is a water equitable standard than --

21 THE COURT: I think a certain number of courts have
22 found that Section 105 generally needs to give affect to a
23 different code provision. I think it even says that.

24 But in all events, from the stand point of
25 scheduling, maybe it makes sense to conference very briefly off

1 the record just on the administrative side of things and see if
2 there's anything productive that can be done to address the
3 issues raised by the papers.

4 You know, at the end of the day it's a valuable piece
5 of property. It's significantly encumbered, it appears on the
6 record, it's undisputed that it is encumbered in excess of its
7 value or to use the term of under water. So I think that
8 presents some challenges too.

9 Let's go off the record in order for planning
10 purposes, I don't think we'll need to go back on the record.
11 All right? We'll find an adjourned date for status under an
12 appropriate time.

13 All right. Let's go off the record.

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C E R T I F I C A T I O N

I, WANDA ESHLEMAN, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.

/s/ Wanda Eshleman

WANDA ESHLEMAN

J&J COURT TRANSCRIBERS, INC. DATE: July 20, 2015